

## **REMARKS**

Claims 1-51 remain pending in the application. Reconsideration is respectfully requested in light of the following remarks.

### **Section 101 Rejection:**

The Examiner rejected claim 51 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Applicants respectfully traverse this rejection in light of the following remarks.

The Examiner states, “The claims are directed to a signal directly or indirectly by claiming a medium and the Specification recites evidence where the computer readable medium is defined as transmission media or signals.” However, claim 51 does not recite “computer instruction signals.” Claim 51 recites “computer accessible storage medium”, which is described in the instant specification. Page 14, paragraph [0055] of the instant specification states:

Various embodiments may further include receiving, sending or storing instructions and/or data that implement the operations described above in conjunction with Figs. 1 – 5 upon a computer readable medium. Generally speaking, a computer readable medium may include storage media or memory media such as magnetic or optical media, e.g. disk or CD-ROM, volatile or non-volatile media such as RAM (e.g. SDRAM, DDR SDRAM, RDRAM, SRAM, etc.), ROM, etc. as well as transmission media or signals such as electrical, electromagnetic, or digital signals conveyed via a communication medium such as network and/or a wireless link. (emphasis added).

The specification states that a computer readable medium may include storage or memory media as well as transmission media or signals. Applicants’ previously amended claim 51 to be specific to storage media, thus excluding transmission media or signals. As Examiner is certainly aware “...a claimed computer-readable medium encoded with a computer program defines structural and functional interrelationships between the computer program and the medium which permit the computer program's

functionality to be realized, and is thus statutory” as stated in the MPEP §2106 IV.B.1(a) (*emphasis added*).

Accordingly, Applicants respectfully requests removal of the § 101 rejection of claim 51.

**Section 102(e) Rejection:**

The Examiner rejected claims 1-51 under 35 U.S.C. § 102(e) as being anticipated by Kalyanavarathan, et al. (U.S. Patent 7,185,096) (hereinafter “Kalyanavarathan”). Applicants respectfully traverse this rejection in light of the following remarks.

Regarding claim 1, contrary to the Examiner’s assertion, Kalyanavarathan fails to teach **a load balancer receiving a request; the load balancer selecting a node to handle the request from among a plurality of nodes associated with the load balancer and not known by the load balancer to be inactive; prior to sending the request to the selected node, the load balancer determining if the selected node is able to service the request; in response to determining that the selected node is unable to service the request, the load balancer selecting another node to handle the request from among the plurality of nodes associated with the load balancer and not known by the load balancer to be inactive.** The Examiner cites Kalyanavarathan FIG 2, steps 200, 202, 212 and 214.) However, Kalyanavarathan teaches a load balancer that relays an initial request to a selected node **without any determination as to whether or not the node is active**. The selected node services the request and returns a result with session information. When the load balancer receives another request related to the same session, it checks to see if the node that initially serviced the request is active (through the use of a heartbeat) and sends the request to the node, if the node is active. Kalyanavarathan teaches to determine if a selected node is active: (1) After the node has been selected and a session initiated, and (2) After an initial request has already been serviced by the node, and (3) For the node indicated by the session information. This is clearly different than the applicant’s claim. Kalyanavarathan clearly does not teach, prior

to sending the request to the selected node, the load balancer determining if the selected node is able to service the request. In fact, Kalyanavarathan teaches just the opposite since Kalyanavarathan's load balancer does not make any such determination until after the request has been sent to the selected node.

**In the Response to Arguments section** of the Final Action, the Examiner admits Kalyanavarathan's invention does not check whether or not the node is active prior to sending the request to the selected node. The Examiner states, "Examiner agrees that Kalyanavarathan's invention first sends a request to the nodes without checking whether or not the node is active. However, the initial step is necessary for Kalyanavarathan's invention to determine which nodes are active." The Examiner then asserts that for a subsequent request Kalyanavarathan's invention would determine whether the next selected node is inactive prior to sending the subsequent request to the next selected node. However, such a subsequent request in Kalyanavarathan does not correspond to the request in claim 1. The request in claim 1 is the request for which the load balancer selects a node to handle the request from among a plurality of nodes. **In contrast, the subsequent request referred to in Kalyanavarathan is a request pertaining to the same session for which a node has already been selected when the initial request was received.** See col. 3, line 62 – col. 4, line 7. Thus, in Kalyanavarathan for the subsequent request the load balancer selection scheme is not used unless the already selected node is found to be inactive. Kalyanavarathan refers to this as "sticky" load balancing. Therefore, the subsequent request in Kalyanavarathan does not correspond to the request in claim 1 since the request in claim 1 is the request for which the node selection is performed by the load balancer when the node is not known to be inactive.

For at least the reasons above, the rejection of claim 1 is not supported by the cited art and removal thereof is respectfully requested. Similar remarks also apply to claims 26 and 51.

## **CONCLUSION**

Applicants submit the application is in condition for allowance, and an early notice to that effect is requested.

If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5681-54400/RCK.

Respectfully submitted,

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